

**Summary Minutes
City of Sedona
Historic Preservation Commission Special Meeting
Vultee Conference Room, 102 Roadrunner Drive, Building 106, Sedona, Arizona
Monday, March 9, 2015 – 1:00 p.m.**

(5 minutes, 1:00 - 1:05 pm for items 1 - 3)

1. Verification of notice, call to order, Pledge of Allegiance, roll call

Chair Unger confirmed that the meeting had been properly noticed and called the meeting to order at 1:00 p.m.

Roll Call:

Commissioners Present: Chair Brynn Burkee Unger, Vice Chair Ann Jarmusch and Commissioners Robert Albrecht, Allyson Holmes, Charlie Schudson and Steve Segner. Commissioner Jane Grams was excused.

Staff Present: Mike Goimarac, Audree Juhlin and Donna Puckett

Council Liaison: Councilor Scott Jablow

2. Approval of the November 24, 2014 minutes

MOTION: *Commissioner Segner moved to accept the minutes as written. Commissioner Albrecht seconded the motion. VOTE: Motion carried six (6) for and zero (0) opposed. Commissioner Grams was excused.*

3. Commission and Staff announcements

The Chair announced that she attended the Madole Memorial last week, which went very well, and he will be missed very much.

Commissioners Schudson and Segner announced that there are now 19 plaques mounted and another nine on order. Commissioner Schudson added that you see people pausing and reading, and Commissioner Segner agreed that people are walking up and down the walkway now.

4. Review/discussion regarding a presentation by the City Attorney's Office relating to the open meeting law, conflict of interest and ex-parte contacts and other applicable state and local regulations (60 minutes, 1:05 – 2:05 pm)

Presentation, Mike Goimarac: Indicated that the law hasn't changed much, but this presentation is designed to help you stay within the law, in terms of conducting of your meetings, knowing when you might have a conflict of interest, and creating/preserving public records.

Open Meeting Law: Mike explained that under the Open Meeting Law, we are trying to avoid the image of doing things in backrooms, etc. We want to be very transparent and that applies to every Commission, sub-committee of a Commission or City Council, and the public policy says under the statutes how we have to interpret the Open Meeting Law. It also talks about the public policy that meetings are conducted openly, etc., but the last sentence says, "Toward this end, any person or entity charged with interpretation of this article shall construe any provision of this article in favor of open and public meetings." Certainly, it is telling us that we need to err on the conservative side, and the Attorney General's Office takes this to heart. They have a group called the Open Meeting Law Enforcement Team (OMLET) that receives and responds to complaints, and their interpretations are very conservative. Just understand that this is where we are supposed to come from and that is how he interprets the Open Meeting Law.

Mike indicated that some states call the Open Meeting Law "Sunshine Laws", but they are designed to make sure the public can be assured that when we conduct business, legislate, etc., and make

decisions as a city body that we are not trying to hide anything from the public, including the things we are deliberating. The irony of the Open Meeting Law is that it does not apply to the State Legislature; they created it, but they don't want it to apply to them.

Commissioner Schudson asked what other organizations are subject to the Open Meeting Law, and Mike explained basically any public body, and the statute defines a public body as a city, town, state agency, like a State Parks Board, the Arizona Corporation Commission, etc. Courts and the Legislature do not have to comply, but in terms of the city, any official Commission and if you create a sub-committee of two or three of you by way of either an act of your Chair or an act of the body as a whole, that sub-committee is then subject to the Open Meeting Law. The Commissioner then asked about quasi-public organizations, such as homeowner associations and the Chamber of Commerce. Mike explained they are not considered a public body per se; a non-profit corporation does not have to comply; it is basically for government bodies.

Chair Unger indicated that one curiosity was why the city's plan for people to volunteer is not under the same restriction, and Mike explained that the work groups are not created by the City Council or a body such as the Commission; they are a staff-driven thing, so they are not subject to the Open Meeting Law. Commissioner Schudson asked about the logic of that distinction, and Mike referenced the definition of a public body in the statute, which is an entity created by a political subdivision in terms of its governing body or the Chair of that governing body, so that is an exception, and that is one reason we wanted to have the Citizen Engagement groups formed that way, so they can be more flexible, because they talk about very specific issues and are mainly citizens themselves, rather than groups that the Council or Commission formed, so the distinction is that they are more of a citizen's group than a public body that was created officially.

Commissioner Schudson stated that seemed surprising and gave an example comparing Zoning Commission hearings, with the Mayor telling a staff member to get something going, and the same kind of meeting takes place. Mike explained that if the Mayor dictated that a staff member do something that if the Mayor did would be a public body, that would be attempting to circumvent the Open Meeting Law. The city has tried to be very careful with the Citizen Engagement groups to ensure that those are all formed by citizens who come forward to say they want to start a group to look into an issue, and then the staff member forms that group, and we don't try to exclude members of the public from those meetings. In fact, the whole idea behind Citizens Engagement is that we try to encourage more citizen involvement, so it is more citizen-driven rather than Council or Commission-driven. Audree Juhlin added that the citizen's groups do not take away from the legal process; we still go through the public hearings, whether it is with this Commission, the Planning & Zoning Commission or the City Council. No decisions are being made in those working groups, for example, if you had a sub-group working with staff on a policy for historic preservation to bring forward through the process, that is essentially how it is happening.

Commissioner Albrecht noted that it was the Mayor and City Council that negated some of the Commissions to go more toward the Citizen Engagement process and asked if they are not more or less behind that? Mike Goimarac explained that they approved the process, but part of their process said they wanted to stay out of that process, and the Open Meeting Law talks about the governing body or the Chair of that governing body forming the group. We can argue about whether or not it should be that way or not, but . . . , Chair Unger interjected that then somebody volunteers to be on one of those groups, but staff says they don't want you, just these people, so it is rather awkward, but that is not something within your purview to decide. Commissioner Albrecht added that it is awkward that citizen members can talk among themselves away from a formal meeting, and they are not held responsible for their discussions may be beyond the scope of the meeting, so it seems like it goes in a circle, where a lot of people could develop input on a topic outside of a formal meeting, and that topic is what is going to affect the general public.

Donna Puckett explained that one distinction is that the Open Meeting Law is designed to ensure that any governing body is transparent in terms of its work, but staff has always been able to ask for volunteers to help with certain projects, and that is a distinction, because the Open Meeting Law

does not have oversight of the city's staff. It is the elected or appointed governing bodies, and those Citizen Engagement groups are not making decisions, a lot of it is research and gathering input to bring forward a proposal, and from there it falls into the formal public process before a Commission or the City Council. Commissioner Segner added that the City Council decides in an open meeting what the outcome is.

Chair Unger asked if it is true that the public too could come up with proposals to put in front of the City Council, so it is not just those bodies that have that opportunity. An individual group could actually put something together to bring to the City Council. Mike Goimarac explained that a great majority of our Citizen Engagement groups are initiated by citizens, most staff people don't sit around thinking about what kind of group they could come up with, and he supposes if you said you want total transparency, maybe every staff meeting should be subject to the Open Meeting Law, but where do you draw the line. The dividing line in the statute is if the official public body or the chair of that body creates a group, they are subject to the Open Meeting Law.

Mike Goimarac explained that it is important to be worried about the Open Meeting Law, because there are civil penalties involved. You could be required to pay attorney's fees, and if the intent is to deprive the public of information a member may be removed from office and have to pay costs and fees, so there are some sanctions in the law for violations. When we have official meetings, the public has the right to attend, listen, tape record, bring cameras and videotape, but technically, they don't have a right to speak. Oftentimes in our City Council meetings, you have a call to the public where a member of the public can talk on an item that is not on the agenda, but that is not even a requirement; it is an option, and we do that in the City Council meetings. Of course, members of the public don't have a right to disrupt the meeting, so the public can watch the meeting, but their participation can be limited.

Mike indicated that as to who must comply, all boards and commissions of the state and political subdivisions, all standing special or advisory committees or sub-committees of or appointed by such public body, so that again is how the statute reads as to the applicability of the Open Meeting Law. There is a special definition of an advisory committee, "A committee officially established upon a motion and order of a public body . . . and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made, considered, or a course of conduct to be taken or considered by the public body", so if the Historic Preservation Commission on official motion or by the Chair creates a sub-committee, then it is also subject to the Open Meeting Law.

Mike explained that if you are a public body covered, it says, "All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings; again having a voice at the meeting is not a requirement. One of the key definitions in the Open Meeting Law is the definition of a meeting as, "The gathering in person or through technological devices", and that includes computers, emails, phones, cellphones, etc., "of a quorum of members of a public body in which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action." You don't have to have a meeting like this one to be a meeting that is covered under the Open Meeting Law; it can be something done through email or on the phone or in a restaurant, etc., and if it is a quorum, meaning a majority of the members of the public body, and city business is discussed, then you are meeting under the Open Meeting Law. If you all get together to watch a baseball game, technically, you are not having a meeting, but you have to guard against perceptions, because some people's perceptions are that you are going to be discussing business.

Mike indicated that if you are a public body having a meeting, some of the requirements are that you have to have an agenda posted 24 hours in advance, and it is a limiting document in that it defines what can be discussed, and it says, "Only matters listed on the agenda and other matters related thereto", and that last phrase is kind of a gray area, because you might start talking about an issue on the agenda, but it might start veering off on a tangent, and it is oftentimes a judgment call as to when you have gone too far afield. The preference is to make the agendas

broad enough, so you anticipate those other matters that might be related, and the public is aware of the general area you will be discussing. The Attorney General's suggestion is that you can't reorder the agenda if your purpose is to put an item at the end so all the members of the public will get tired and leave, but Mike indicated that he doesn't see that ever happening. Sometimes an agenda is reordered to accommodate members of the public by putting those items first, so they have an opportunity to hear what is going on.

Mike noted that there is an exception in the Open Meeting Law where you don't have to meet in front of the public, and those are called Executive Sessions, but the statute limits the reasons for which you can have an Executive Session to very specific kinds of discussions, and those include:

- Personnel matters - the policy consideration is when you are debating about applicants, you have to do that in confidence or they could learn about the questions in advance, etc., or if you are discussing a termination, those can be in Executive Session.
- Confidential records - although he doesn't know when the Commission would encounter that.
- Legal Advice - the most frequent reason for an Executive Session, because you want to get frank legal advice and you should be able to do that while preserving the attorney-client privilege. When talking about
- Litigation and settlement discussions, etc. - those things don't have to be in an open meeting.
- Salary negotiations and negotiations with Indian Reservations or to purchase real property - are also reasons for Executive Sessions, and those all make pretty logical sense.

Commissioner Schudson asked who has the authority to reveal anything that takes place in an Executive Session, and Mike explained that nobody has the discretion to reveal what takes place in Executive Session; in fact, the law requires that we admonish members of the public body that things in Executive Session are confidential and privileged and shouldn't be disclosed, but if the Commission, for example, has an Executive Session and you want to look at the minutes or listen to the recording, you as a member can do that or if you are absent for an Executive Session, you have the right to listen. The other person who can find out what happened in Executive Session is the Attorney General's Office, so the attorney-client privilege goes to the wayside when it comes to them wanting to do an investigation. It is also important when in Executive Session to remember the reason why you are in there and not let the conversation evolve into a discussion that should be in the open meeting. If you are in there for legal advice, you get the legal advice and come out of Executive Session; you don't get the advice, and then discuss the issue while you are in there. That deliberation is supposed to be in an open meeting.

Commissioner Schudson gave an example of getting legal advice in Executive Session, and then the next day you have a legal meeting with your lawyer and an adversary's lawyer, it seems there might be circumstances where you might want to feel free to share the nature or conclusion of the discussion in an Executive Session. Mike indicated that is kind of a gray area and problematic at times. Typically, when you do get direction in an Executive Session from the Council, and you are expected to get direction, and the idea is that you are expected to react to those things when you go into a Settlement discussion; you just need to be careful in terms of how you couch what is disclosed. A blow by blow account isn't something you can do, but certainly you can act on that advice. The main concern is not disclosing who said what, etc.

Commissioner Albrecht asked if you can have an Executive Session before or after an open meeting on the same day, and Mike indicated it could be before or after, but you have to put on the agenda that you intend to go into an Executive Session and you have to quote the law that governs that type of Executive Session, so the public knows the general subject matter. Typically on the agendas, we even say that the Council or a Commission always has the right to go into Executive Session for legal advice concerning any item on the agenda, so you are agendaized to go into Executive Session if something comes up, but you have to vote to go into Executive session, so it is not automatic. It still has to be done pursuant to a vote, so you have to vote to go into Executive session, it has to be on the agenda, and only individuals whose attendance is reasonably necessary may attend, and you can't vote in an Executive Session, because there may be a difference of opinion, like what you want to spend on a piece of property. When the Attorney

General's Office is asked that kind of question, they say you just figure out where everyone stands, but you don't vote on it. If there is something you need to vote on, voting always has to take place in an open meeting, and Executive Session Minutes are available only to members, discussed employees and law enforcement.

Mike explained that an employee discussed in Executive Session has a right to even demand that it be in an open meeting, so that is one exception where someone subject to an employment issue can say they want it in an open meeting. Commissioner Schudson asked, if the City Council wants to discuss an employee's performance in Executive Session, would the employee know, and Mike indicated yes, the employee would have to be notified 24 hours in advance that the governing body would be discussing them in Executive Session, and a standard letter is sent saying that and saying that they have the right to demand it be in an open meeting. Commissioner Schudson asked if that employee is the only one to whom that has been disclosed, and Mike indicated no, it would probably be on the actual agenda. Commissioner Schudson asked if once the employee says to make it public, can the employee flip the switch to get it back into Executive Session. Mike indicated that the law doesn't really talk about that, but he would err on the side that the Executive Session is designed to protect the employee's privacy, so if they want to do that, he would err that way. The Commissioner then asked if the employee has the right to be in that Executive Session, and Mike indicated typically yes, if you are talking about a termination or something, but for the City Manager interviews, we didn't let all of the applicants come into the Executive Sessions; we interviewed one-by-one, and that is typically a distinction that has been made, but if your job is on the line, typically you have a right to hear the charges against you, and in that context, they are allowed to be in the Executive Session, but that is kind of an interpretation.

Commissioner Albrecht asked if the employee technically couldn't talk, and Mike indicated that they don't have to allow the employee to, but oftentimes, these meetings are quasi-judicial in nature like a pre-determination hearing in that you have liberty interest in your job, and the idea is that there has to be some due process before that liberty interest is taken away. His feeling would be that you would give them an opportunity to be heard, and most City Councils don't want to hear just one side of the story, so he doesn't think that is ever an issue.

Mike Goimarac referenced meeting etiquette and things to be aware of, because other cities have had these issues reported in the newspaper, etc. You are asking for trouble if during a meeting or break, you start chatting amongst yourselves or you are emailing or texting each other, so you have a conversation going on during a meeting, and the public isn't privy to it. Some people have raised questions when Commissioners start whispering among each other, etc. Talking before and after a meeting can sometimes get you into trouble, so be aware; it is a perception-type of concern, and when they hear, "We can't talk about that now", it gives them some comfort that the Commission members are cognizant that when they discuss city business, it has to be in the open meeting context.

Mike explained that in terms of circumventing the Open Meeting Law, there are things that the Attorney General says you shouldn't do, such as use any device to circumvent the law through emails, phones, etc., or by splintering the quorum, such as before the meeting Council person A talks to Council persons B and C, and C then talks to Council person D. There was never a majority talking to each other, but that is called "splintering the quorum" and is a no-no. Serial communications is kind of the same thing, by meeting with individual members and reporting what others said with enough to constitute a quorum. Polling members to find out everyone's position is frowned on by the Attorney General, and going from one person to the next sharing communications would violate the Open Meeting Law, and this is all out of the *Arizona Agency Handbook*. Also, you can't do any of these things by using a staff member, so rather than you talking to three Commissioners, you tell the staff member to find out what the others have to say.

Regarding email, Mike explained that you can't use email to circumvent the law or use it to propose, discuss, deliberate or take legal action, so if you unilaterally send an email to other Commissioners saying that you think the Commission should consider the historic designation of this property, that

mere proposal is a violation of the Open Meeting Law, even though no one has ever talked back to you. Now, contrast that with having a nice memo that contains some factual information about historic preservation in another city and you want to send that to the Commission; it is merely a factual thing and they are not suggesting that they do anything and you just say for your information this is something that may be of interest; you can send that by email, but the recipients can't respond or start conversations about that via email. For the most part, email has to be one way and it can't propose any kind of legal action.

Mike provided the following examples, "Councilperson Smith was admitted to the hospital last night"; that is fine, because it doesn't talk about city business or proposing any action, unlike, "We should place an historic marker on the Brewer property", because that does propose legal action, so that is not something you would want to say in an email. Commissioner Segner asked if you could say that we ought to bring up at the next meeting to think about a plaque. Mike explained that suggesting things to be put on the agenda is okay.

Mike explained that a great statement to put in an email is, *"To ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other members of the Commission. Members of the Commission may reply to this message, but they should not send a copy of their reply to other members."* When you put something like that in there, and there is a public records request, it gives the public an assurance that we are taking the Open Meeting Law seriously.

Commissioner Segner asked about the proposed change at the state level and how that would affect this. Mike indicated that there was a proposed bill to allow discussion, but not final action, outside of open meetings, but it was shot down. The lady that proposed it used to be on a three-member board of supervisors, so no two could talk about anything, but the majority of the legislature had no sympathy for that.

Conflict of Interest: Mike explained that sometimes issues come before the Commission that might affect our monetary interest or property interest, and that is when a Conflict of Interest occurs. A conflict of interest does not occur when you have an interest in historic buildings and people might think you are very one-sided, but that is not a conflict of interest. Merely having a passionate interest in something that is not property or money-oriented does not create a conflict.

Mike indicated that the first type of conflict is called the "substantial interest", and it says that you or a relative, including a husband, child, sibling, etc., have a substantial interest in any decision that you deal with as Commissioner, and a substantial interest is defined as a money interest or a property interest. For example, if you are talking about doing an historic designation on a house next to your house, that may affect your property value in some way, so you probably have a substantial interest. If you do have a substantial interest, the law says you have to do two things. One is disclose it, and the best way is in writing to a staff member and also on record to the Commission. You have to let them know that you have that interest, and then you have to refrain from participating in any manner, so it is not just refraining from voting, but refraining from involvement in or outside of a meeting. If you do that, when that issue comes up at a Commission meeting, you have to disclose it, sit in the audience, not participate in the discussion and not participate in the vote.

Mike explained that there are some exceptions to it in the statutes that are kind of safe harbor areas, where the statute says there is no conflict of interest in these situations. One is an unpaid officer of a non-profit corporation, such as the Sedona Historical Society, and as long as you aren't paid, it doesn't affect your ability to come in here and make decisions, even if that decision affects the Historical Society.

Commissioner Albrecht asked about when a family member is a paid employee of that non-profit, and Mike explained that would impute to the Commissioner, so you would have to declare that conflict on behalf of your family member. You always need to not only examine your interest, but that of your family members as well. The Commissioner then asked how far down that goes, and

Mike indicated that there is a level of 'sanguinity', but he couldn't say where the cutoff is. When in doubt, ask him. If you own less than 3% of a corporation and that corporation has a money interest in a decision, you don't have to get off of the issue, but if you are a director or substantial shareholder of a small corporation, then you probably have a conflict of interest. If you are a recipient of public services like everyone else, for example, when we raise wastewater rates and the Council members' houses are hooked to the sewer system, their decision will affect their pocketbook, but it doesn't mean they would have to get off or we would never be able to make a decision. Mike indicated that kind of the biggest loophole is if you have a similar interest to a class of at least 10 persons and your interest is no greater than theirs. An example would be if an historic property is in the same subdivision one-half mile away, and that might have some chilling effect on property values, but if you can point out that there are at least 10 other homes closer than your house, you could argue that your interest isn't any greater than theirs.

Mike explained that another type of conflict of interest is the "city provider" conflict and that means that when you became a member of the Commission, you kind of disallowed yourself from providing services, materials or equipment to the city. Once you come onto the City Council or a Commission, your ability to do that is very limited. Typically, you can't be on that Commission and sell services to the city. When he retires, maybe he will go into private practice, but if he gets on a Commission, he can't represent the city as a contract attorney, etc., so sometimes people have the opposite idea that if they are on the City Council, they might get the inside scoop on things, but the law is specifically designed to not allow that to happen. The exceptions are if your materials are bought pursuant to a competitive bidding and you are the successful bidder, then the city is getting the best bargain and the fact that you are on a Commission shouldn't prevent that. Additionally, another exception is if we are only talking about \$300 in materials or \$1,000 maximum per year, it is not deemed a conflict for that limited amount of services or materials.

Mike explained that the next conflict is called "self-dealing", and you can't represent a person for compensation before a city agency, so as an employee, he couldn't go in front of the Planning & Zoning Commission while he is an employee and represent a third party, and for two years after you are an employee or Commissioner, you violate the law if you use information gained as an employee or Commissioner. You also can't receive directly or indirectly any additional compensation for service that you do in connection with your job. You are volunteers, but there is nothing that you can receive indirectly or use your position to secure a valuable benefit that would not normally accrue to you. For example, if you are stopped for speeding, you can't say that you are on the Commission; it doesn't work.

Commissioner Schudson asked how the line draws down, like for lunch. Mike pointed out that if we weren't here, we would normally have eaten lunch at home, and it is considering that we are taking away from you, because you have to be here. He has never heard of that coming up, but if you want him to ask the Attorney General, he can do that. Audree Juhlin explained that the purchasing policy states how we can or can't buy food for a Commission. If this was a one or two-hour meeting, we would not provide lunch, but because it is anticipated to be at least 4 hours long, we have the ability provide that according to the policy. Mike agreed like the City Council meeting for a few hours, so the idea of giving people the sustenance they need to endure the meeting is not of valuable influence, but if you want to be hyper-technical, you could argue it is a valuable benefit.

Commissioner Albrecht asked if there is anything like a direct non-compliance rule, for example, if he were the owner of Staples, the fact that he is on the Commission has nothing to do with office supplies and the city purchasing those. Mike indicated that there are a lot of nuances to the things and case law, so that is why it is important when you have those questions that you ask, because they will research the question and facts, and the beauty is if we research it and the City Attorney's Office comes to the conclusion that we don't think there is a conflict of interest and we put that in writing to you, it gives you immunity if you are challenged. If you violate the Conflict of Interest laws, it is a felony, so you want that immunity. If we say there is a conflict, then you better follow that opinion, because you would have no immunity and our opinion could be used against you, so when in doubt, come and ask.

Mike added that there are numerous Attorney General opinions on conflict of interest and Arizona cases discussing this law, and there are some real nuances. Commissioner Schudson suggested that under this standard or the purchasing policy, there is probably some elaboration of reasonableness, so sandwiches would be fine today, but Maine lobster flown in fresh would not, but there are things that are in-between. Mike indicated that he is not aware of a case talking about a food issue and it goes to the directness of the conflict, and you have to take those facts and extrapolate them to the issue you are talking about. Donna Puckett added that the food is tied to the approximate length of the meeting, not to a property owner who is bringing in lunch when they are on the agenda to get you to grant something.

Commissioner Jarmusch asked if the Conflict of Interest Law applies to the Legislature and Mike indicated that he thinks it probably does, but he thinks they have their own ethical rules that might be more or less strict than this. The Commissioner noted that it is kind of scary, because it is a felony and we are volunteers. Mike then indicated that he can take a look at that, but when it doubt talk with Legal.

Create/Preserve Public Records: Mike showed a video of a guy going into Maricopa County asking for a public record, and it showed that he refused to make the request in writing. The employee asked if it was for a commercial purpose, because they can charge more if it is for commercial purposes, and indicated that he needed to put in writing whether or not it was for a commercial purpose. He continued to refuse and indicated it doesn't say that in the statute, and then he left without the records threatening to go to Superior Court. Mike then explained that we get all kinds of interesting public records requests, and they don't need to have any legitimate purpose. If you want to request the moon for harassment purposes, you can do that, and sometimes that happens; however, it is important for you to understand that, because as a public official, you are the creators of public records. If you create a document like your emails, when you are talking about official business of the Commission, those are all public records, and it falls within the definition of "All books, papers, maps, photos and other documentary materials, regardless of physical form or characteristics made or received by a governmental agency in the transaction of public business", so that is very broad, and this is another "Sunshine"-type law to ensure people can keep tabs on what the government is doing. It includes memos, reports, emails even on a personal computer, and that is a caution, because if you have an email exchange between your personal computers about Commission business, technically, in the worst case scenario, your computer could be subpoenaed. Audree Juhlin asked if that relates to smartphones too, and Mike indicated yes and wherever the cloud is that stores that hard drive can be subpoenaed to get those records.

Mike then indicated that the other requirement regarding public records is that, "All officers shall maintain all records reasonably necessary or appropriate to maintain an accurate knowledge of their official activities", so you have the duty to preserve all of them. This is a legal duty that arises with all of us. Commissioner Albrecht stated that he doesn't have an historic preservation computer, so is there some phrase to put on an email or something? Mike Goimarac explained that the easiest way to preserve the public records if you are using your personal computer is to always cc the staff member on their city email address, and if you do that for all of the emails, every email in the city is backed-up and stored essentially forever, and we have retrieval abilities to retrieve every email, so if you have cc'd the city's computer, then you have effectively created a way of preserving them, because that email will not be erased. If you have just done emails without putting them on a staff's computer, then you have the duty to preserve them yourself. The Commissioner then asked if he has cc'd a staff member, can he get rid of it on his computer, and Mike explained that if he has cc'd it, then he could get rid of it on his own computer, because it is being stored, but you have to cc everything, not just the original email. It is all of the responses and everything. If you want to create your own hard drive section and copy all of those emails, and then give them to the city is another way of doing it. Chair Unger indicated that it is easiest to always cc Audree and Donna, so they both have it. Donna Puckett asked if there is a string of dialogue from multiple responses, do they have to save each one or just the final one that has that whole string, and Mike indicated that the problem is that you don't know which one is the final one. Audree

Juhlin then noted that staff doesn't have to, because it is stored automatically. Chair Unger indicated that if it is for city business, it is easiest to just cc them.

Mike explained that anyone can request a public record, and they need only pay for the cost of making the copies. Most of the time, we give them the emails electronically and we don't charge them anything. We can't charge for the time to search out and locate a record, so if someone makes an obscure request for something that happened in 1989, and we have to go to the storage vaults for 20 hours that is our problem, because we can't charge for an employee's time. It really demonstrates how serious the government is about ensuring the citizens have access to public records, and it speaks highly of our democratic process. If the city doesn't provide a requested copy, then they could sue us and be paid their cost for attorney's fees, and they have a separate action against the public official and public body for any damages that might result in denial of a public record. The statute is very one-sided and we aren't awarded attorney's fees if we prevail in a lawsuit; it is only if they prevail, so we take this very seriously in terms of preserving and supplying people with public records, and we need your help to ensure that we always maintain them.

Commissioner Holmes noted that there doesn't seem to be any deadlines on the time limits for providing the records, and Mike explained that the statute says that it has to be within a reasonable time, and people have been sued for taking months to disclose public records. We try to do it within 10 days; we have a great email retrieval system, but sometimes hard copies are the ones that take longer to search out.

Commissioner Albrecht commented that they then shouldn't write letters to the Red Rock News on their opinions of certain things; however, Mike indicated that he doesn't know that it would be a public record. First, it is made public by writing to the Red Rock News, but if you were to write a memo to a constituent, it would be a public record. Chair Unger asked if, as a member of the Commission, they write a letter to the editor is it mandatory to put something in there that we are members of HPC. Mike explained that our Rules of Procedure require that if you write a letter expressing your opinion, you must put in the letter that it is your personal opinion and not representing the opinion or position of the city, so the argument would be made that is not a public record; it is your personal opinion and you are not speaking as a Commissioner or on behalf of the Commission. Chair Unger then added that is to ensure that it is not construed as doing something as part of this Commission or part of the city.

Commissioner Albrecht asked if it would be possible to get a copy of those phrases that we need to put in, and Chair Unger agreed that would be a good idea. Commissioner Schudson indicated that if we want to see how serious this is, we can just watch the front page of the NY Times, because it could be enough to end a Presidential campaign, and Mike agreed that is a good example of how you can get into hot water by using your personal email. Donna Puckett added that speakers at public meetings also use that disclaimer, so if you were to express your opinion at a City Council meeting, then you would make it known that it is your opinion and you are not speaking for the Commission or the city. The Commissioner explained that he was referencing something to use in general, and Mike indicated that he could provide the rule in the Rules of Procedure, but there are no magic words; it just has to say these are your own opinions and not those of the Commission or City.

Commissioner Schudson indicated that the flip side of that is to emphasize that public service is not intended to deny an individual a chance to function as individual citizens; it does sometimes allow for protection, because by virtue of such service, when solicited by a neighbor or a cause, one could say that while serving in this capacity, it could be confusing if he were to join in and for the appearance of fairness, he would prefer to stay in the background on it.

Chair Unger indicated that she is still somewhat confused about the Open Meeting Law and the change to the Citizen Engagement Program, and Commissioner Segner added that we are a deliberating body and make decisions; they are recommending bodies. Mike again explained that the Commission is a body created by the City Council, and the Chair then noted that is the

difference. Commissioner Schudson indicated that that it would be hard to explain to a citizen on the street, and Audree Juhlin added that the differentiation is that we have an elected body and anything that comes from that elected body, such as through the appointment of a Commission and sub-committees is held to the Open Meeting Law. Staff is not elected; we are hired through a hiring process to do a job and her job has always been about bringing citizens together and holding focus groups or meetings with citizens. Mike noted that if we made the citizens in the Citizen Engagement groups comply with the Open Meeting Law, they would question why they had to do that, because it is restricting their right to assemble.

Chair Unger commented that staff is hired by the City Council too; however, Audree stated no, the staff is not elected or appointed through an official body, only through the City Manager. Chair Unger indicated that makes it easier for her to understand. Commissioner Schudson then asked who was hired for City Manager, and Mike indicated that the motion that was made public was that the City Council voted to extend an offer to a gentleman named Justin Clifton who is a City Manager out of Delta, Colorado that has a population of about 9,000.

5. Review/discussion of Roles & Responsibilities of the Commission (30 minutes, 2:05 – 2:35 pm)

Chair Unger referenced the binder given to new Commissioners regarding what we should be doing in public meetings and reviewed the following points:

- Use our formal titles for public hearings and practice civility and decorum in discussing and debating. We generally do that, but we need to ensure we don't override what everybody else is saying, and we want to ensure that everybody gets heard.
- In terms of the Chair maintaining order, she doesn't feel that the group ever dishonors her, but at times, conversations start flowing back and forth, and it makes it difficult for her to control the meeting and for everybody to hear what is being said.
- Stay focused on the issues at hand and remember that all statements are part of the public record, and that is hard when we get into a discussion that we are emotional about; sometimes we get a little sideways on that.
- Don't dominate the discussion, avoid personal attacks on other members, and she doesn't think there has been a time when we have had that problem.
- Demonstrate effective problem-solving approaches.
- Be polite to speakers and treat them with respect.
- Actively listen when others speak.
- Avoid debate and argument with the public, and turn off all cellphones and pagers during meetings and work sessions. If an imminent emergency or serious matter is anticipated, set the phone on vibrate only and step out of the room if the call must be taken.

The Chair indicated that going forward everyone announcing their names or her calling on the member would make it easier, because people have said that they listened to our meetings, and they aren't sure who said what or what was being said, because we tend to over-talk one another. Donna Puckett added that she had a call a few months ago asking why she didn't properly identify a person in a meeting, because the minutes say Commissioner so and so, but in the meeting the person was addressed as Steve or Brynn, etc. In the minutes, she shows the title and last name, and you may have two Commissioners with the same first name. Brynn noted that the Commission is going to follow those rules a little more closely to make it easier for the public, and make it faster when we stay on subject. We usually have gotten our meetings done within the timeframes and she would like to maintain that, so she appreciates everybody's understanding of that.

Audree Juhlin asked if anybody had any questions about the roles and responsibilities, and there were no questions.

6. Discussion regarding strategies to optimize the work of the Commission, how to be effective, individual/work group assignments, etc. (30 minutes, 2:35 – 3:05 pm)

Chair Unger noted that in the past, individuals have taken the responsibility of doing different things for the Commission, and Audree Juhlin explained that currently we do not have any HPC work groups, and we really haven't had any real work in about six months, so we are starting at a good clean slate as far as going forward.

Audree Juhlin then distributed a draft work program and explained that it is meant to be a free-flowing discussion. Commissioner Jarmusch indicated that she read the 2014 Annual Community Report that says under the Community Development Department in the last major accomplishment, the update of the City's Historic Resource Survey, but she thought it was still in progress and the Commission would be participating. Audree explained that in last year's budget, the City Council gave us about \$6,000 for professional assistance, and we had been talking at the Commission level about updating the survey and the amount of work, time and effort that goes into that. It is a huge project to take on, so the Council said to hire a professional and get it done, going through the Commission as well. If you recall through the past year, we brought Cynthia Lovely in a number of times and she was assigned to discuss what we were doing and how we were going to revise it, so you saw the different steps of that process.

Chair Unger indicated that she doesn't know that the Commission saw the final. Audree Juhlin explained that she thinks the final was given to the Commission, but no action was taken and we probably wanted to do that, but over the last three months, we haven't been able to get the Commission together, but the survey and paying the consultant was done. The Chair then stated that it would be good to take a look at that; we didn't actually discuss it as a group after it was completed. It may have been that we had so many hearings that we didn't do that. Audree Juhlin agreed and explained that it would be the final report that we paid someone to do, and it was compiled a little differently than how it was done in the past. It is now broken into sections; we have current landmarks, ones that could potentially be landmarked, and those that would not meet the criteria to be landmarked, so when someone comes forward about a location, we can say it has been surveyed and removed from the qualified list. We don't want to lose the historic information, because there is still some relevance, and that was presented to the Commission as far as ensuring we were moving in the right direction; we just didn't bring the final product back. The Chair noted that the Commission had so many hearings; they took the Commission's time over the last few months.

Commissioner Segner indicated that if we have this document and know the houses we don't want to look at, the houses we have already done, and a finite number of homes that might be useful, it would be a good time to review those and decide if they should go in a different category. He then asked if that would be reviewed like every five years, and Audree indicated yes. The Commissioner then repeated that it would be good to look at the list and determine if there are any that the Commission wants to act on in the next Work Program.

Audree Juhlin explained that she didn't include the survey in the Work Program, because that piece was considered training, since that was the focus in the last meetings. We have new Commissioners who haven't done this type of survey and it is technical, so it would come under the item for training on what you do when you survey a property. The survey is done and the person has been paid, but to maintain it as part of the CLG requirements, and it is the responsibility of the Commission and staff to manage it and keep it up to date. The Chair added that it is imperative that the Commissioners know what is on the survey and that can be part of the training, and we had talked about the Commission going out and doing a survey.

Commissioner Schudson asked what CLG is and Audree Juhlin indicated it is the Certified Local Government, where the city has agreed to work with the State Historic Preservation Office, which gives the city access to technical expertise and sometimes small grants. When we were discussing which Commissions should stay or go, one of the reasons HPC stayed in place was because of the CLG agreement, and the city basically entered into that agreement between the state and federal government and the city in 1997 or 1998, to provide a means to protect the historic resources within

the city, so we are bound by that agreement until it goes away, and she can provide another copy of the agreement that has been sent to the Commission before.

Chair Unger noted that for training, SHPO will come to us and give some CLG training through that agreement. They give it at the conference, but not everybody is attending, so that would be worthwhile. There are things that not all of the Commission is totally aware of, so it would be a good idea to have them come up and do that. Audree added that when we have a landmark or Certificate of Appropriateness come forward at a staff level, she always calls SHPO, because they are the experts and they always provide that information as part of their agreement. Chair Unger noted that they were also behind in what the Federal government wanted them to do, so they now want to get out there and do the CLG training, etc.

Audree Juhlin then reviewed the following items from the draft Work Program for 2015:

- The first item came from the Commission, and the idea was that not all properties are eligible for landmarking, but some are certainly worthy of noting, so this would create a program for those properties that aren't meeting the criteria, but could be recognized for their contribution.
- The second item was Council-mandated that has not been done yet. It goes back about 18 months, and the Commission was charged to look at the Historic Preservation Ordinance in the Land Development Code and appropriately include emergency repairs, how we define minor and major repairs, and see if there are things that can be done outside of Commission meetings, like the more administrative items, and this closely tied into the next item.
- Third is the Historic Preservation Small Grant Program, so the second and third items go hand-in-hand, but are included separately, although they are two things that have been assigned by Council that have not been done. Chair Unger noted that Phoenix has a program that if there is an emergency in a home, staff can allow the people to do certain repairs, like a roof repair, because if there is a big hole in a roof, we may not be able to hold a meeting in time, and that may be an element that is critical to the look of the building, so we need to be more proactive.

Commissioner Segner indicated that two years ago, it took a lot of time when somebody tried to delist, because they felt they weren't being taken care of in repairs, but there was later a discussion as to whether or not we should be in the repair business, and a lot of us felt we shouldn't be, but there was also a consensus that an exception policy should be put together where the city staff could say they could do it without having to come in front of the Commission, so they could do an emergency repair. Where he has a problem is when we start paying for emergency repairs, we open a Pandora's Box, and we got in trouble two years ago, because everyone defines the box differently. It is good for staff to be able to give an exemption to fix it until it could be repaired properly, but we should discuss whether or not we should get into the business of granting the fixing of buildings.

Chair Unger noted that is what Audree was saying; each of those things go hand-in-hand and even though they are separate subjects, they are going to be subjects that need to be joined together. Audree then explained that this draft is at a high level right now, and the direction you are going in discussion is the next item under agenda item 7, where we brought forward Phoenix's philosophy on historic preservation, and we wanted to introduce those concepts at this meeting to start thinking about them, and then as we work on these items, we have some idea of where we want to go.

- The website improvements were on the prior Work Program, but we won't be doing any improvements at this time, because the city is in the process of changing our website, so anything we do now would be a waste of time. We need to wait until we get the new website; however, we can start thinking about the items that you want to see on the website, so that once the new contract is in place and we have the new website online, we can move forward quickly. Chair Unger noted that Cynthia Lovely had put some things on there, and it is a lot more complete than it used to be, so she wanted to compliment the city on that. Audree explained that those improvements were based on what the Commission said, so we have listened and tried to implement what you told us.

- The Brewer Road Master Plan is another large Work Program item. The City Council purchased the Forest Service house and barn on Brewer Road, and we are going to be master planning that, because it is a much bigger picture than just historic preservation. Staff will put a Citizens Engagement work group together, and it will include a number of various agencies, in an effort to get a neutral-based group. We will be calling in a large group of people, and the HPC in general to participate, and then a neutral group will make a recommendation. Commissioner Segner suggested bringing the Design Group in to re-show the Heart of Sedona work; it is not just that building, it is how it affects everything around it.
- In a broader context than the Brewer Road Master Plan is the CFA planning that is the bigger picture, so the Ranger Road CFA and the Schnebly Hill CFA will be done at the same time to get a broad master planning effort, with the specific master planning for the Brewer Road property, but what needs to happen first for Brewer Road is to determine the uses we want and the Heart of Sedona is the key to everything. Chair Unger noted that the big thing for HPC is what the exterior of the buildings would look like. Audree Juhlin explained that where the Commission is going to be crucial is in the CFA planning effort, because it is looking at what happens in the historic area. Commissioner Holmes thanked Audree for noting that she wanted to be in the work group, and Audree explained that the Commissioner's name came up for a number of reasons, and staff will get with her to discuss that process. The Commissioner then confirmed there is no conflict in being on that group and the Commission, and Commissioner Segner suggested that everyone should give their ideas to see what comes to the surface; neutral isn't always best. Audree explained that finding that core group of neutral people is proving to be a little difficult, but Commissioner Holmes's history with her father, etc., is playing a role in protecting it, so her name was brought up by about 20 different people, because her interest is in protecting its integrity and not an agenda to make it something specific, like a comedy theatre, skating rink or wedding venue, etc.
- For the CFA specific planning group, this Commission will be involved heavily with one or two of you at a time on the groups, but in total, you will be responding to different proposals.
- Training has been discussed a number of times, and in some of our last Certificate of Appropriateness meetings there were questions, and we thought we could bring in some training on those points too, as well as the surveys. Commissioner Segner noted that it is time to go out and see some of them, and Audree added that the Commission should take the survey forms to see what was looked at and approved, and which ones didn't make the list. Commissioner Schudson asked if there is a process to identify a property that is a likely candidate for landmarking, in advance of its eligibility, and Commissioner Segner indicated that he did that five years ago and got county maps broken into 10-year increments, and every five years some are popping up. Audree Juhlin added that there are still things popping up today, and Chair Unger noted that at the Madole Memorial, there were photos of a house she had not seen.

Commissioner Schudson then asked if there is a tickler system, and Audree Juhlin indicated yes, from what Commissioner Segner did in the past with the mapping system, but we all need to keep our eyes open and bring others back to the Commission, so we can do the research. If we think something is going to be worthwhile for historic preservation, we need to get with them early so nothing happens, and when they meet that criteria, it is more likely that we will be successful in landmarking it; otherwise, we could jeopardize the building. Commissioner Segner suggested calling it a significant property, and when it becomes old enough, we can move it to a protected property.

- The item for National Appreciation of Native Americans Month and Archeology Month is still on the list. Chair Unger noted those might be something to shift to the Citizens Engagement program, because she worries a little, since staff noted that we were dipping into too many things that didn't really have anything to do with the Commission, and she doesn't know if that is something that we should be doing.

Commissioner Holmes indicated that regarding Archeology Month, she is involved in setting up the program at the park, and the calendar is saturated with events in this area, between the State Park, V Bar V and various speakers and programs, etc., so she isn't sure there is much

left that we could do. The Chair suggested that what we should do then is look at the National Appreciation of Native Americans. Donna Puckett recalled that there were previous articles about an organization that was partnering to bring in the Hopi to do some of their historic ceremonies, and they talked about their agricultural practices in Sedona. Commissioner Holmes recalled there was a group that encourages donations like Crossing Paths or something, and Commissioner Albrecht suggested it might be Crossing Trails.

Commissioner Segner explained that he sees the Historical Society as accumulating information, but not being very good at disseminating it, and the Commission tries to protect certain things, but some people ask what the city is doing about history, and he previously brought up the idea of finding out what was city-owned land in Uptown along S.R. 89A, to see if there could be a kiosk, because there is no way to disseminate historic and event information, and he would like to get the different groups talking. Chair Unger again repeated her concern as to how far the city wants the Commission to go outside of landmarking, etc.; however, Commissioner Segner noted that the Historical Society might prepare the information and the city would just designate a spot, but everyone needs to discuss if that is a good idea. Commissioner Albrecht asked if the kiosk might be more of a Chamber of Commerce function, and Commissioner Segner explained his idea was to have a kiosk farther up the street, perhaps on both sides, with the history of Sedona and some general information on activities that week, and it might just be the job of the Commission to get the people involved that would make it happen. Audree Juhlin indicated that is a valid question and what others are saying is also important, because the Commission doesn't set the work program; it goes to the City Council for approval, so you aren't working on something that Council doesn't agree with. The Council might say that it is a great idea, but the Historical Society is more appropriate or the Chamber, etc., or that staff needs to create a vehicle to implement it.

The Chair asked if the Work Program needed to be done today, and Audree indicated no, this is just the starting point to determine what the Commission wants to work on for the next year, then we will have a joint meeting with the Council to discuss it. Audree also reminded the Commission that the Work Program has to be realistic, because the Commission has to do work too; it can't be just the staff implementing these items. Donna Puckett noted that one or two items were mandated by Council last year, and you don't want the focus to be too diffused, so it might be good to consider the priorities, to determine what makes sense in terms of the Commission's work items. Chair Unger agreed that the Commission could prioritize the list.

Commissioner Albrecht noted that the Council has changed and asked if the priorities are still the same, and Audree Juhlin indicated that we don't know. Commissioner Jarmusch expressed concern that historic preservation really isn't in the new Community Plan, and asked if there are ways to insert something. Audree Juhlin explained that the Commission can look at the Community Plan and decide where it fits most appropriately, but she sees historic preservation all through the Community Plan, perhaps not stated explicitly, but protecting the community and making sure the built environment doesn't ruin what we have, and you can't have one without the other. Donna added that the Citizens Steering Committee, not only for historic preservation but for some other areas too, decided that they wanted it viewed throughout the Community Plan, rather than having an isolated element, so the whole philosophy was built into the three overall themes. Brynn attended one of the meetings regarding the interest in making sure that we are preserving Sedona's history, etc., through the whole Community Plan. Commissioner Jarmusch noted that was her understanding until she read it and Chair Unger agreed that she was a little disappointed; it doesn't really say it, but we can certainly bring it up in our own way.

BREAK (10 minutes)

Chair Unger recessed the meeting for a break at 3:01 p.m. and reconvened the meeting at 3:20 p.m.

3. Commission and Staff announcements (continued)

Chair Unger welcomed Scott Jablow, Council Liaison to the Historic Preservation Commission.

7. Discussion regarding the Commission's preservation philosophy, future direction, and future work program items (90 minutes, 3:15 - 4:45 pm)

Chair Unger indicated that Audree wanted the Commission to discuss some of the things that will be on our Work Program, and we could discuss creating a Pride Program, but we all understand what that might be and look like, unless somebody has a different thought. Right now, we are discussing what might happen with each Work Program item. Commissioner Jarmusch indicated that she would like to see something on here about reviewing and approving the survey; however, Chair Unger explained that she doesn't know that it needs to be on the Work Program, although it is something that the Commission wants to do, and it could be done in conjunction with the training.

Commissioner Holmes indicated that the Commission needs to heed what Donna said about focusing on the legal requirements of the things the Commission needs to do, and then if there is time we can take on other things, but first we need to focus on the legal requirements. Chair Unger agreed and referenced the second item listed in the draft work program related to amendments to the Land Development Code, such as emergency repairs, minor repairs and major repairs, and indicated that it was intended for this to be more of a free and open discussion of how we feel and what we think we need to do, because it is imperative to have something on the books.

Chair Unger then referenced a handout that Donna had regarding Phoenix's program, and Donna explained it is the preservation philosophy from the City of Phoenix. Chair Unger noted that she did some research on it and it seems to come closest to what we might want to adopt, and unfortunately, this wasn't sent out, but everybody should review it, because it goes into all forms of rehabilitation and preservation. There are four things that could happen, including new construction, preservation and additions, and there was also a part about emergencies. Donna then distributed a handout on the Certificate of No Effect, and the Chair encouraged the Commissioners to read the philosophy, because it is a really good resource and each item is really different; for example, restoration versus rehabilitation versus preservation, and they are under different sections in the national code.

Commissioner Schudson asked why we are looking at this now and why we probably are not looking at this now in detail, and if it is correct that now we are entering a discussion on our Commission's philosophy. He is inferring that we have agreed that first and foremost our preservation philosophy consists of the very careful fulfillment of our legal role; our responsibility to fulfill that statutory role to ensure the identification, protection, preservation and landmarking of historic properties, and Chair Unger indicated yes. He then stated that is the Commission's foundation stone of our philosophy, but that is not to suggest that in our meeting today we are going to undertake a detailed examination of the way in which we implement that with the Phoenix example or anything else. Chair Unger indicated that we are talking about how this Commission feels about it; the philosophy is exactly that, but the question is do we allow or create a frame of reference for city staff to make determinations without the Commission present, because if there is an emergency, we are going to have to give staff the right to do something. Are we going to say they can do preliminary repairs, so as not to allow something more radical to happen or are we going to let them do a bigger repair, etc.?

Commissioner Schudson indicated that is a very detailed element of historic preservation. He then asked if we are discussing that today or our overall Commission's philosophy and where the legal obligation fits. Donna indicated that it is both; there are two different things, and one of the items that has come up is the Commission's overall historic preservation philosophy, like when we have had hearings and one or two Commissioners feel that this type of roof would be appropriate and others indicate it would be better if it was something else, but what is the Commission basing that on other than personal feelings; we haven't come up with a standard philosophy. Commissioner Schudson then asked if the Commission is then discussing the philosophy within the first responsibility, not what else the Commission does, and Donna explained that the intent was for it to be an open discussion. The Commissioner then restated his question, and Chair Unger indicated that in terms of our philosophy, we bring very different elements to this individually, but we also

have said that something probably looked like this, but how are we going to make that determination. If we step into the second item on the Work Program and give the city the ability to make certain decisions, we better know what we feel about it before handing it to staff.

Commissioner Segner indicated that Phoenix put together a very detailed piece to guide them and that is staff-driven; staff wants exact rules on what to do. With a Commission, you use people with expertise and it is not a defined outcome; it is a little sloppy, so we need to be careful that we aren't zeroed into a thing, but Phoenix may not use a Commission, although they did a pretty good job on the Certificate of No Effect, and if this were a private company, he would go to staff and ask if they are happy with this or write up a version you like and bring it to the Commission, so we could review it and vote on it. We just have to say this is important and part of our job, spend four hours on it and do it, but not today. Chair Unger expressed that one concern was when talking about the George Jordan house, we ended up saying that this or that might have happened, and there will be instances when it is vague, but we should be able to say that we have a clear idea of what it looked like. Commissioner Segner stated that was more trouble than it was worth, and he thinks he was told by staff that he could do certain things, and then the Commission said no, so we didn't look in a good light. When talking with the state, a comment made was if the owner who had landmarked it would recognize it, and that is a simple statement. When he landmarks his hotel, he hopes it will stay the way it is and the city will say that it needs to stay the way it was when he landmarked it, but in that case, we didn't have a good picture.

Commissioner Albrecht asked about the document, because it appears that we are going to be in the construction business to say who is going to do what to a home and how they are going to do it, but how can we control that the person is qualified to do that, and then we are leaving it up to staff to say go do that, so he doesn't understand how the Commission's philosophy of trying to control historic preservation can be given to a staff member in a checklist. Chair Unger explained that is part of what the discussion is about. If we allow repairs to be made, and we all need to read what has been put in front of us, but maybe we say if you have a problem with the roof, you can remedy it, but you can't go farther. The Commissioner then asked if the goal is to evaluate a historic property as to whether or not it should be put in a historic mode and be approved or not includes the maintenance of that under the Commission too. Chair Unger stated yes, it always does, but only the outside. The Commissioner indicated that is strange compared to St. Louis and in trying to figure out how to match the exterior to what they want to do on the interior; there has to be some realm in that, because just to keep an old brick wall there and gut the interior isn't going to necessarily preserve the building. The Chair explained that by law, the Commission cannot do the interior. When we landmark, by the federal law, we cannot dictate what goes on inside the building; we can only dictate what happens on the outside.

Commissioner Schudson stated that he wanted to save the Commission from an aimless conversation that jumps among three topics, and we need to make a choice – possibility one is to have a discussion on the Commission's philosophy of preservation, the first and most important component is the given of preservation and landmarking, but we might say we all know that, so we are going to set that aside and complete the discussion on what is the philosophy of preservation of this Commission, such as how we relate to other topics, how we work with the Historical Society, how we address things that might relate more to the school system or Chamber of Commerce, etc., and that is possibility one, but if we go in that direction, we are not discussing the nuts and bolts of the document. Possibly two is the flip side of that, so that is exactly what we are going to discuss, given that is the foundation stone of the Commission, so let's sort it out and get it detailed, and leave all of the ancillary functions for another day. Possibly three that he just heard is that we have to start thinking more philosophically about that first foundation stone, because we have to ask ourselves philosophically who makes the call and do we view it as a staff-driven decision, a Commission-driven decision or a hybrid, plus in addressing the details of the foundation stone component, is there any justification for the Commission going alone or must it be done in coordination with similar standards set statewide. Are the Phoenix standards a template from which we dare not deviate?

Chair Unger indicated that it is probably number three, because we have to determine how we want to be attacking this and the fundamentals are there. We are here to ensure that the historic buildings will be here. Commissioner Schudson indicated that he would defer to the Chair's selection and go with that first, and he would offer some questions. Philosophically, regarding the implementation of that first and primary responsibility of the Commission, where do we stand? Is that something that should be our own to devise with focus on the unique circumstances of Sedona or is that something to develop in coordination with similar developments in other parts of the state and/or under the scrutiny of SHPO, so we don't develop a methodology that is inconsistent with a recommended state or federal philosophy, and then what are the relative responsibilities, discretions and authorities of staff and the Commission?

Chair Unger explained that the reality is for the Commission to function and keep the CLG, we are required to stay within the foundation of SHPO, but we don't have to call them in every instance. Frequently, we use them for guidance when we are looking at something that is outside of what we have done in the past. We also use them to reinforce what we think is appropriate, and the whole philosophy of when walking up to the building and it looking like it did, the preference is that it would look like it did when it was built, but we have some issues with that, and one of the bigger things to consider is what it looked like when the building was landmarked versus what it looked like when it was constructed. We sometimes don't know what it looked like when it was constructed, so we have to determine if we want to try to figure that out and her feeling is that it is a better bet to go with the understanding of what it looked like when it was landmarked.

Commissioner Segner indicated that SHPO does a lot of training for people and they teach the standards, so we are safe with their standards; if we work with that philosophy, we are okay. The second philosophy is in an emergency what happens, but the first question is what an emergency is. Is it a leaky roof that can't wait for six weeks? If so, that would go to staff, and staff has a policy that we would put together, or if it is not an emergency, we ask if it could wait three weeks until the next meeting and staff would make that determination, so staff has boundaries that we set-up that defines an emergency. You could put together something that says they can do this until the next regular meeting in order to alleviate any damage. He doesn't want to turn the whole thing over to staff, because staff would need something all typed up to say what they could do, and it isn't that cut and dried.

Commissioner Schudson then indicated that we aren't the only Commission that might encounter an emergency situation, so does SHPO have a standard for that? Chair Unger indicated she didn't think so, almost every city does it and that is why she pulled up the things from Phoenix, because they just came up with this new plan and spent a long time on it, and they have a standard for emergencies. SHPO doesn't have regulations on that and they expect the cities to come up with a way to deal with it; they get more into the philosophy of what the building looked like and how much could be changed, like when you can't get the identical materials, etc. The process isn't something they really get into; we have to develop that.

Commissioner Schudson noted that the drafts are from 2012 and asked if they are the most current, and Chair Unger stated yes. The Commissioner then asked if other cities have generated similar things. Audree Juhlin explained that SHPO's role is to assist the cities; they don't put in regulations, standards or policies, but they interpret the Secretary of Interior Guidelines to help cities. They are the experts we refer to when we have a question, but it is up to the community to set how we go about doing preservation, so that is up to us, although they will provide any technical assistance needed. The Commissioner then asked if anyone has studied what we received from Phoenix, in order to offer a recommendation to the Commission as to if this would be a good fit or how it should be modified. Chair Unger indicated that she read it, and Audree Juhlin explained it is on the agenda, because that is the task in front of the Commission; that is the Commission's responsibility. One of the Work Program items is this or something else based on any research you may do. Commissioner Schudson asked if a staff member has done that, and Audree stated no. The Commissioner then suggested that both the Commissioners who are inclined to do so and staff members who are responsible for doing so make a detailed study of what we received from

Phoenix and report back to the Commission; we can't do that today. Chair Unger explained that the Commission is not going to make that decision today; it is just on the agenda for discussion, and Donna Puckett explained the idea was to give it to the Commission so you can study it, and then bring it back on an agenda for discussion.

Chair Unger noted that sometimes we send things out and not everybody reads them, so by having this discussion, it makes it obvious as to what we need to do. She likes the ideas in this, but there will be some details to add or remove, but you need to go through it. The Certificate of No Effect is what we are really going to focus on, and to understand that you should read the philosophy, because the Commission needs to give something to the City Council that can be incorporated. Audree Juhlin added that the Land Development Code holds the Historic Preservation Ordinance and that is mandated by state law, so any changes to that has to go through a specific hearing process and all of it needs to be reevaluated, because it hasn't really been changed since 1997, so it is probably antiquated in terms of not keeping up with best practices. Looking at the whole thing, and each of you might have a different philosophy of what that means, but once you have your collective opinion of what you can support, the public hearing process begins – first with this Commission, then the Planning & Zoning Commission, and then the City Council, so everything proposed needs to be comprehensive and have unified support.

Chair Unger noted that Audree is not just talking about just changing the Land Development Code in a little way; she is talking about rethinking our part of the Land Development Code. Audree asked how many Commissioners have read the ordinance; for instance, where does this piece fit with other pieces and where are there overlapping points that need to be reevaluated. Just because we have done it this way for so long, doesn't mean it is the right way to leave it in the ordinance. Commissioner Segner asked if she is saying that for the Work Program this year, we should really revisit the whole ordinance, and Audree indicated yes. The Commissioner then indicated that is the year; that won't be an easy job to go line by line.

Commissioner Schudson questioned whether that would be the most beneficial use of their time, and is that really the Commission's responsibility and area of expertise; if they took that on would that not preempt their time for just about everything else. Audree Juhlin explained that the other option is that we are hiring a consultant to review the entire Land Development Code and do a comprehensive update, if it passes the City Council budget process, and that can be incorporated, but the Commission will have to provide guidance to the consultant. Chair Unger noted that the Commission did make an alteration in the Land Development Code in terms of what we would allow to be landmarked. We changed the wording so it made it less necessary to look at only properties that were 50 years old, and those are the major kinds of things, so she doesn't know that we would want to change that again, but we even talked to SHPO about that. It had to gain significance in the past 50 years or be 50 years old.

Commissioner Schudson asked if the Land Development Code is a city ordinance, and Audree indicated that it is a zoning code ordinance of the city, and Donna indicated it would also be the document that would address emergency repairs. Commissioner Segner stated that if we just want to insert a paragraph written by staff that identifies a current problem that is one thing; however, Audree pointed out that is still a six-month process. The Commissioner indicated he understood, but looking at the whole code would be a daunting job; however, Donna clarified that Article 15 is the Historic Preservation Ordinance.

Commissioner Schudson suggested that between now and the next meeting, the Commissioners and staff accept the responsibility to fine-tooth comb this (Phoenix) document without looking at the Land Development Code, and then say this document is the gospel or it sucks or it is something in-between. Part of the analysis should include a call to Phoenix to ask how they would now suggest it be modified, and by the end of the next meeting, we have it done. Next, we take our draft that we believe to be our statement of historic preservation philosophy and see where we might have bumped into something in the Land Development Code, and he will volunteer to do it, if needed, and reconcile them.

Chair Unger asked if this is the City of Phoenix's whole packet, and Audree indicated that it is only a little portion of it. The Chair indicated that she could send that packet again, because it is a little easier to read. This was from SHPO working with the City of Phoenix, and Phoenix also went to the public for input, so it was a very long process, and it has not just the Commission members input or staff's input; it brought together everyone's ideas, so it wasn't done in a silo.

Commissioner Segner indicated that Phoenix made a concerted effort to protect some of their old neighborhoods, and we should review our ordinance to see if it is current; if we are happy with it, leave it alone. If it needs to be fixed, then make a couple of suggestions and if something needs to be inserted, give staff some power; staff needs to write what would be appropriate. Audree noted the need for direction from the Commission and pointed out that it is also for the property owner who doesn't know what they got involved in, and the first paragraph states that these guidelines are intended to supplement the provisions of the Historic Preservation Ordinance, so it is meant to be guidelines to help the Commission and public understand. Chair Unger expressed that the Commission could use this document as a resource, but she is very impressed with our Land Development Code; we have done a very good job with it. Commissioner Segner then suggested sending that to everybody for review, and at the next meeting, we just concentrate on that document. The Chair then added if there is something that you don't understand, going into the Phoenix document as a resource would be a good idea.

Donna Puckett explained that as far as staff writing what needs to be inserted, staff can put words to paper, but staff needs the direction from the Commission as to what you want that paper to say. Commissioner Segner explained that his point is if someone has a historic building on Brewer Road and has a problem, then what does the person at the counter do, and that is why he mentioned that if you were to write that portion to say you would ask these questions, and depending on the answers, these would be the outcomes, we would put that in the Land Development Code, but we need to define an emergency. Chair Unger agreed that those are the philosophical things that we need to discuss and once we have that definition, how much leeway does staff have? Unfortunately, we have left a big hole in the Land Development Code, because forcing people to come to the Commission when we sometimes don't have a meeting for six weeks can put the buildings in danger.

Commissioner Schudson stated that the three things he wants from staff by the next meeting are 1) Contact Phoenix to learn their experience over the last two years of working with this, 2) He wants staff to learn from SHPO and other communities whether or not they have generated anything like this that they could share, and 3) He wants a fine-tooth analysis of this with an eye toward staff's advice to the Commission about what could work in Sedona, what could be tweaked a little, or could not work at all. Chair Unger questioned how much of that needs to fall to staff to do, and Audree indicated that she couldn't guarantee that staff could have that by the next meeting on April 13th. Chair Unger indicated that she would not be available for that meeting, and Audree then explained that the structure for the Commission was that staff would give 20% of one staff person's time to the HPC, and the purpose was that it was a working Commission, so a lot of the work would be done by the Commission. By asking staff to do it, we will do it, but it has to be incorporated on a full plate.

Commissioner Schudson then asked that it be done by April 13th, but less thoroughly. An exhaustive analysis isn't needed; this is a phone call or two. The Chair then asked if it isn't possible for a Commissioner to ask those, and Audree Juhlin explained that the person who would be doing the work is the Director, and she has no other staff to assign it to, but she will do the best she can. If you get a little, you will get a little and if you get a lot, you get a lot. The Chair again asked if it isn't possible for a Commissioner to do some of the work and Audree responded that it is expected; City Council expects that.

Commissioner Segner noted that if it was determined that the Certificate of No Effect wasn't too bad, then he would have to decide what is an emergency, so what if he put down his view of five or six steps and others could also do that, then we would have a core to work from. Maybe everyone

looks at it and in the next meeting discuss how we would implement or change this. Commissioner Schudson stated that a Commissioner could do this, but there are elements where a staff member would be able to say if it is practical, so let us take our action plan that between now, and for the next meeting, everyone at the table go through this and say if this is the philosophy we want to adopt or to what extent we want to modify it. Staff can give us staff's perspective and the Commissioners' perspectives will all be part of the mix.

Chair Unger indicated that what Commissioner Segner said is critical, because we understand what this is about, but there are people who don't, and the person at the counter gets the questions, so staff's perspective as to how it could best be used by staff would be useful. Commissioner Schudson then stated that what would be dumb and dumber would be to embark on this for the next 30 days without the benefit of Phoenix's experience and the knowledge of other communities that have generated a similar thing. The Commissioner then asked who would get that, and Audree indicated that she would call Phoenix and SHPO.

The Chair then asked Commissioner Jarmusch if she had any familiarity with it in San Diego, and the Commissioner indicated not for an emergency; she knows that some buildings were lost, because staff and the Commission weren't available, but she will ask. Audree Juhlin repeated that she has no problem contacting Phoenix, because they will respond to her.

Commissioner Segner noted that if someone says they have a historic building and they have a problem, it would say to contact Audree. Then, she would contact two Commissioners and within 24 hours they would go look at the house and formulate a plan with Audree based on these guidelines. Audree agreed that is the direction she is looking for, what does the Commission want? The Commissioner then stated that if the Commissioners don't respond, then Building & Safety will look at it and say there is a big problem; it should be simple. Audree pointed out that if staff doesn't know what the Commission wants, we can't give you anything. We can write what we think, but it may not meet the Commission's needs and the Commission is who we are trying to write it for.

The Chair agreed and indicated that everyone should look at Article 15 in the Land Development Code. Commissioner Schudson asked if that would be emailed to the Commission, and Audree indicated that she could email it. The Chair noted that she has thought it was really clear, but looking at it again in comparison with Phoenix's document is something she hasn't done. Audree explained that for instance, we spend time on landmarking, and the ordinance says that it has to be maintained and repaired, but how? We did not define that or a process as to how the Commission would ensure that it is maintained. We are dealing with Certificates of Appropriateness, because of the lack of maintenance on the part of property owners, so those are the kinds of things we need to look at in terms of where it is failing, and the maintenance of these buildings is not happening.

Commissioner Schudson asked if a Commissioner starts to draft something, should it be emailed to Audree to provide it to everyone. Audree indicated yes, by indicating that it is for informational purposes only, so no comments or suggestions or changes until we get to the meeting. The Chair then noted that Audree is right; she wasn't thinking of those things and you can put something about process as to how we are going to oversee things in there.

Commissioner Schudson indicated that it wouldn't be prudent to have the next meeting without the Chair present, and Audree stated that if the Commissioners would be willing to forego April and go into May, she could have most of the information requested. Chair Unger added that it would give all of the Commissioners the opportunity to read all of the information, and Donna pointed out that if the Commissioners don't do it, then you will be having this same discussion in May.

The Chair agreed and asked about going into the money for the grants, because that is something we need to think about. Commissioner Segner stated that the Commission is not far enough along in the process to be in a granting position or know if we are going to have grants. Audree noted that the Commission hasn't established the policy, and the Commissioner then suggested putting

that way back and maybe not even do it this year. Audree then explained that we wouldn't be able to issue any grants this year.

Commissioner Schudson noted that the date for the next meeting would be May 11th at 4:00 p.m.

Commissioner Jarmusch noted that there was a comment that Commissioners might look at a roof and two would say this and two would say that, operating on personal tastes, but she wanted to counter that we don't operate that way. We operate under the Secretary of Interior Standards, guidelines from SHPO, and Audree's experience, and Audree noted that is how it should be. Donna added that is the foundation, but we had a case where at least the applicant was perceiving some inconsistencies in different feedback as to what materials, etc., would have been acceptable, because there wasn't agreement on at what point you were taking it back to, the time it was built or the time it was landmarked, but Commissioner Jarmusch is correct. Audree added that is one of the things that is philosophical that still needs to come out.

Commissioner Holmes expressed that she feels there are going to be a few differences in interpretation and discussion, and it is appropriate. Audree Juhlin agreed, but explained that the key to that is to establish that point, so if you are going to rehab something, to what point in time has been predetermined or is there criteria to determine if it is upon construction or upon landmarking. Chair Unger indicated that could be done with each individual property landmarked, because the first time she encountered that so strongly was when they were roofing the Sedona Historical Society, and it may have had a metal roof at one time, but we landmarked it with the asphalt roof, and we may have to look at the landmarks and say this is what it looked like and what we expect it to look like in the future.

Commissioner Segner indicated that the Land Development Code should just say at the time of landmarking it. Some buildings have significance that other buildings of the same time wouldn't, and at the time of application, we would know key features that make it unique. Chair Unger added that is a critical part that we don't have in there and they are the things we need to bring to the next meeting. There are some critical elements on each building and how do we determine which ones are to be maintained or do we just say it is what it is now. In Key West, there can be a building that they want to restore to a timeframe, and they do that, and then give it the landmark; they won't give it the landmark until it is brought back to that timeframe. Commissioner Segner noted that there aren't too many buildings restored to when it was built, because if it is a 200-year-old building, there are lots of phases it went through. Audree Juhlin agreed and explained that an example of where that may not be appropriate was the Jordan house, because they put a tin roof on it and found it was not a good thing, so it was quickly changed.

Commissioner Albrecht asked who makes the repairs and who oversees them, and the Chair explained that the homeowner comes in to discuss the repairs and generally tell us who is going to do them, which we might want more control over. The Commissioner then indicated that if the Commission is going to designate a minor or major repair, it makes a difference as to who is qualified to do it. Chair Unger agreed and added that it is also critical that when we have repairs done, we have someone go out in the midst of it and when completed to verify it was completed the way we asked. The Commissioner then asked who pays for the repair, and the Chair explained that is one of the disagreements the Commission had when we had grants, so we probably aren't going to delve into it terribly this year, but once we get this done, maybe we could look at that. We used to have quite a bit of money, but we were paying for repairs on buildings that weren't landmarked, so in reassessing that and deciding that if there is an emergency repair, maybe we could do something.

Commissioner Segner indicated that the problem is when they can't wait 60 days for the next meeting, so we need some formula that staff can use, so they can maintain it and put it back the way it was. It might be tarping it or roofing it, but they have to use this roofing material. Once a house is landmarked, when you want a permit, it will say landmarked in the system and won't issue a permit, but they can sneak in the repairs. Commissioner Albrecht asked if there is something

when people are landmarking about the responsibility for repairs, and Audree Juhlin explained that staff explains the process, when someone comes to us. They landmark it, because of their love for historic preservation, but it is costly and all of the burden is placed on them to maintain it. The Commissioner then noted that love it great, but that doesn't pay the bills for the repairs, and Audree pointed out those are the folks who won't landmark.

Chair Unger added that we are now faced with people who bought a landmarked property that don't really understand it, and that is why the more clarity we have in there the better, and Commissioner Schudson added simplicity, to help people understand that a landmarked home is a value-enhanced home, and those burdensome responsibilities pale in comparison to the enhanced value and pride. Donna noted that it is also protection against the impression that the city is going to pay for something, and Commissioner Segner discussed the impression that we are cheap, and \$5,000 is not enough to do the roof, so we're cheap. It is a lose-lose situation.

The Chair recalled that Megan Smith had told the realtor that she wanted a 50s home, and the realtor said everybody wants mid-century homes. She got her home, because she knew it was landmarked mid-century and she felt she was getting double the value, and she indicated that the realtors are starting to realize the value of that. Commissioner Schudson added that a feature story in the Red Rock News about owners who have experienced an enhanced value would speak volumes.

8. Discussion regarding future meeting dates and future agenda items (15 minutes, 4:45-5:00 pm)

Audree Juhlin indicated that the next meeting will be on May 11th at 4:00 p.m.

9. Adjournment (5:00 pm)

The Chair called for adjournment at 4:35 p.m., without objection.

I certify that the above is a true and correct summary of the special meeting of the Historic Preservation Commission held on March 9, 2015.

Donna A. S. Puckett, *Administrative Assistant*

Date